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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition of Qwest Communications
International Inc. for Forbearance from
Enforcement of the Commission's
Dominant Carrier Rules As They Apply
After Section 272 Sunset Pursuant
To 47 U.S.C. § 160

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WC Docket No. _____

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Federal Communications Commission
Office of Secretary

PETITION FOR FORBEARANCE

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PETITION FOR FORBEARANCE

I. INTRODUCTION AND SUMMARY

Qwest Communications International Inc. ("QCII"), on behalf of its affiliates Qwest Communications Corporation ("QCC"), Qwest LD Corporation ("QLDC") and Qwest Corporation ("QC") [hereafter referred to jointly as "Qwest"],¹ hereby requests that the Federal Communications Commission ("Commission") exercise its authority under Section 10 of the Act² and forbear from enforcing its dominant carrier rules with respect to Qwest in the provision of in-region interstate interLATA interexchange services ("IXC services") post-sunset, whether these services are provided by QC, Qwest's incumbent LEC ("ILEC"), on an integrated basis or separately through some other Qwest affiliate that is not complying with the full array of the Commission's Section 272 rules in existence prior to sunset ("non-272 affiliate").³ In particular, Qwest requests that the Commission forbear from enforcing its Part 61 tariffing and price cap

¹ QCC is an interexchange carrier (or "IXC") and provides intraLATA and interLATA long distance service; QLDC is a reseller of both intraLATA and interLATA long distance service; and QC is the local exchange carrier ("LEC") subsidiary of QCII and also provides intraLATA long distance service.

² 47 U.S.C. § 160(c).

³ 47 U.S.C. § 272.

requirements⁴ and any other Commission dominant carrier rules⁵ as they might be applied to Qwest provision of in-region IXC services post-sunset.

No purpose is served by continuing to impose dominant carrier regulation on Qwest in the provision of in-region IXC services post sunset -- other than to handicap Qwest in the provision of such services. The competitive facts, the Commission's regulatory standard for nondominance and Commission precedent all strongly support a finding of nondominance if Qwest provides in-region IXC services out of its ILEC or by a non-272 affiliate after sunset. In any event, enforcement of the Commission's dominant carrier rules is not necessary to protect consumers or to ensure that rates and practices are just and reasonable and not unreasonably discriminatory. Furthermore, forbearance would serve the public interest by eliminating unnecessary regulation and allowing Qwest to provide its in-region IXC services in the most efficient manner post-sunset.⁶ As such, a grant of this petition is justified.

II. BACKGROUND

Currently, Qwest provides in-region IXC services through two affiliates, QCC and QLDC, that comply with the Commission's Section 272 rules. Both of these Qwest affiliates are classified as non-dominant carriers of IXC services under the Commission's existing rules.⁷

⁴ 47 C.F.R. § 61.31, *et seq.*

⁵ By way of example, inherent in this requested relief is forbearance from any requirement that Qwest must provide in-region IXC services post-sunset through a Section 272 affiliate or any other separate affiliate in order to be deemed non-dominant in providing those services.

⁶ Qwest anticipates that Section 272's requirements will sunset in all Qwest in-region states on December 3, 2006.

⁷ *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Red 15756, 15802 ¶ 82 (1997) ("*LEC Classification Order*").

After sunset of the application of Section 272's requirements⁸ in all Qwest in-region states in December 2006, Qwest will be free to provide in-region IXC services out of QC, its ILEC, on an integrated basis or through a non-272 affiliate. However, under the Commission's existing interpretation of Section 272, sunset will offer no regulatory relief to Qwest.⁹ This unusual situation arises because: (1) ILECs, including the BOCs, are still classified as dominant carriers in the provision of in-region, IXC service;¹⁰ and (2) the Commission has not directly addressed the regulatory classification of non-272 affiliates (*i.e.*, BOC affiliates that do not comply with the full array of the Commission's pre-sunset Section 272 rules).¹¹ Therefore, non-272 affiliates are deemed to be dominant carriers in the provision of in-region IXC service until such time that the Commission finds such carriers to be non-dominant.¹² Thus, QCC and QLDC, Qwest's Section 272 affiliates providing in-region IXC services will be classified as dominant carriers post-sunset, if they fail to comply with all of the Commission's pre-sunset Section 272 rules.

⁸ See 47 U.S.C. § 272(f)(1).

⁹ On its face, Section 272 of the Act appears to imply that the Bell Operating Companies ("BOCs") would be subject to less regulation in the provision of in-region IXC services after sunset. See 47 U.S.C. § 272.

¹⁰ The Commission is addressing the appropriate regulatory classification of ILECs providing in-region IXC service in the LEC Non-dominant proceeding which is currently pending. See *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) ("LEC Non-dominant Further Notice").

¹¹ The Commission's finding in the *LEC Classification Order* that BOC affiliates were non-dominant providers of in-region IXC services was limited to BOC affiliates complying with the Section 272 rules ("Section 272 affiliates"). See *LEC Classification Order*, 12 FCC Rcd at 15802 ¶ 82. However, the language of the *LEC Classification Order* left no doubt that the existence of a Section 272 affiliate was not a key factor in determining whether BOC affiliates were classified as non-dominant providers. *Id.* at 15804-08 ¶¶ 85-90, 15811-19 ¶¶ 97-108 and 15825-26 ¶ 119.

¹² See *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Memorandum Opinion and Order, 17 FCC Rcd 26869, 26869-71 ¶¶ 1-2, nn. 5, 8 (2002).

The Commission first adopted the dominant/non-dominant regulatory framework in the Competitive Carrier proceeding¹³ and addressed the classification of BOC Section 272 affiliates shortly after the passage of the 1996 Act in its *LEC Classification Order*.¹⁴ In its past decisions on carrier dominance,¹⁵ the Commission has found carriers with market power to be dominant. Market power has been defined as the ability of a carrier to unilaterally raise and sustain price above a competitive level by restricting output.¹⁶ In the Competitive Carrier proceeding and thereafter, the Commission has defined a dominant carrier to be one that has market power¹⁷ and

¹³ *In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (“*Competitive Carrier First Report and Order*”); Further Notice of Proposed Rulemaking, 84 FCC Rcd 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Report and Order, 48 Fed. Reg. 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (“*Competitive Carrier Fourth Report and Order*”), *vacated*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp. v. AT&T*, 113 S.Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (“*Competitive Carrier Fifth Report and Order*”); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated*, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively the “Competitive Carrier proceeding”).

¹⁴ The *LEC Classification Order* also addressed the issue of how independent LECs should be classified in the provision of in-region IXC services and concluded that they should be treated as non-dominant providers if these LECs complied with the three separation requirements adopted in the *Competitive Carrier Fifth Report and Order*. See *LEC Classification Order*, 12 FCC Rcd at 15841 ¶ 144, 15850 ¶ 163. And see, *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99 ¶ 9. However, the requirements imposed on those LECs are less stringent than Section 272’s separation requirements and were issued over a decade ago and before the advent of local exchange competition.

¹⁵ *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) (“*AT&T Reclassification Order*”). Also see *Competitive Carrier First Report and Order*, 85 FCC 2d at 10-11 ¶ 26.

¹⁶ See *LEC Classification Order*, 12 FCC Rcd at 15762-63 ¶ 6, 15765-66 ¶ 11. Also see, *Competitive Carrier Fourth Report and Order*, 95 FCC 2d at 558 ¶ 7. The Commission’s analytical framework for determining market power is based on the Department of Justice’s Horizontal Merger Guidelines.

¹⁷ 47 C.F.R. § 61.3(q). *Competitive Carrier First Report and Order*, 85 FCC 2d at 10 ¶ 26.

a non-dominant carrier to be one that is not found to be dominant.¹⁸ Thus, the Commission must conclude that Qwest either has or will have the ability to increase the price of in-region IXC services if Qwest and its affiliates are to be classified as dominant providers after Section 272 sunsets.¹⁹

While the competitive facts, the Commission's regulatory standard for nondominance and Commission precedent all strongly support a finding of nondominance if Qwest provides in-region IXC services out of its ILEC or by a non-272 affiliate after sunset, the problem facing Qwest is that under the Commission's existing rules it is presumed to be a dominant provider in-region until the Commission finds that it is non-dominant. Thus, Qwest cannot move forward with any certainty on any post-sunset planning concerning the provision of in-region-IXC services because it remains trapped in a regulatory quandary by the Commission's continued presumption of dominance.

In the absence of forbearance from applying the dominant carrier rules or some other action,²⁰ Qwest, for all intents and purposes, will be limited to providing in-region IXC service through a Section 272 compliant affiliate. The continued application of Section 272's structural separation requirements to Qwest's provision of in-region IXC service makes no sense when Qwest faces intense competition in the provision of such services from a plethora of competitors (including wireless providers, IXCs, resellers, VoIP providers, cable companies and others) most

¹⁸ 47 C.F.R. § 61.3(y).

¹⁹ The Commission may not classify Qwest as a dominant provider of in-region IXC services simply to guard against potential unlawful conduct or to protect specific competitors without violating past precedent. *See LEC Classification Order*, 12 FCC Rcd at 15762-63 ¶ 6. *And see, Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197 ¶ 7.

²⁰ As noted above in note 10, the Commission initiated the LEC Non-dominant proceeding in May 2003 to address the regulatory status of ILECs providing in-region IXC services after Section 272 sunset. However, as this proceeding approaches its third anniversary, it appears to be stalled.

of whom do not face any such regulatory constraints.²¹ Forbearance would enhance competition by allowing Qwest to avoid unnecessary costs and to provide in-region IXC services in the most efficient manner.

III. SECTION 10 OF THE ACT

Section 10 of the Act directs the Commission to remove needless regulation and creates a strong presumption in favor of deregulation.²² Section 10 requires that the Commission “shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets” if the Commission finds that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²³

²¹ Again, as discussed in note 14 *supra*, Qwest recognizes that independent LECs face some constraints as a result of the separation requirements imposed on them in the provision of certain IXC services (*i.e.*, in order to qualify for non-dominant treatment), but those are not as stringent as Section 272’s requirements.

²² Former Chairman Powell described the Commission’s statutory obligation to forbear under Section 10 as follows: “I believe that under the congressional forbearance scheme, the Commission has an obligation to validate or justify continued regulation in light of competitive conditions and cannot discharge that burden by shifting complete responsibility to petitioners. It is becoming a pattern at this Commission to set its own malleable standards of proof in forbearance cases and then sit back and summarily dismiss petitions for lack of proof. I believe Section 10 requires more. It requires the Commission to come down from on high and itself accept responsibility for demonstrating with some rigor why continued regulation is justified. It requires us to get our hands dirty.” See Dissenting Statement of Commissioner Michael K. Powell, rel. Jan. 29, 1999 at 4 (footnote omitted) to the December 31, 1998 Memorandum Opinion and Order, 14 FCC Rcd 391 (1998) (“Powell Dissenting Statement”).

²³ 47 U.S.C. § 160(a).

In making its public interest determination, Section 10 requires that the Commission consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.²⁴ The Commission has an affirmative duty under Section 10 to determine, “not whether forbearance is warranted, but whether the challenged regulation is warranted any longer.”²⁵ Forbearance under Section 10 is not “discretionary” -- it is “mandatory” once the Commission determines that the above conditions have been met.²⁶

IV. QWEST FACES SIGNIFICANT COMPETITION WITHIN ITS REGION

A. Competition In The Provision Of LEC Services

Competition has exploded -- including wireline, wireless and other forms of intermodal competition -- in the 14-state region where QC, Qwest’s ILEC, provides local exchange services. Qwest no longer occupies the favored place that it did when it controlled the only communications link to residences and businesses. There are many competitive alternatives

²⁴ 47 U.S.C. § 160(b). However, the Commission has rejected “as inconsistent with the statutory language, AT&T’s suggestion that section 10(b) precludes forbearance absent a showing that it would enhance competition among providers of telecommunications services.” *In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2650 ¶ 46 (1998). “The plain meaning of this statutory language [Section 10(b)] is that a determination that forbearance would promote competition is a possible, though not a necessary, basis for a finding that forbearance would be consistent with the public interest.” *Id.* at 2651 ¶ 48.

²⁵ Powell Dissenting Statement at 4. In his dissent, Commissioner Powell suggested that once a carrier makes a *prima facie* case that a regulation is unnecessary, the burden should shift to the Commission to determine whether continued enforcement of a regulation or statutory provision is still necessary under the statutory criteria of Section 10.

²⁶ Forbearance is not limited to specific provisions of the Act but also includes regulations that the Commission has promulgated. The only restriction on the Commission’s forbearance authority is contained in Section 10(d) which limits the Commission from forbearing from applying Sections 251(c) and 271 until those requirements have been fully implemented. 47 U.S.C. § 160(d).

today.²⁷ On the technology front, wi-fi, VoIP and the Internet have already and will continue to have an enormous impact on both the level of competition and how carriers satisfy customers' communications needs. Competition is not restricted to densely populated areas in the Midwest and on the East and West coasts, as some industry observers seem to imply. It is pervasive throughout Qwest's service area as Mr. David L. Teitzel notes in his attached declaration.²⁸

Mr. Teitzel points out that Qwest faces significant competition in the provision of local exchange service in its 14-state territory. He notes that "an ever-increasing number of customers" are meeting their communications needs by purchasing service from providers other than Qwest.²⁹ He states that "[w]hile competitive local exchange alternatives have enjoyed significant customer growth, Qwest's retail access line base has declined from 17,091,000 in December 2000 to 13,177,000 in September 2005."³⁰ Mr. Teitzel cites to findings of TNS Telecoms, an independent research firm, that indicate that "[i]n second Quarter 2005, Qwest's share of residential connections declined to 36%."³¹ Mr. Teitzel closely examined wireless competition and found that "the number of wireless subscribers in Qwest's Region has increased from 12,039,618 in June 2000 to 22,000,795 in December 2004 [an increase of almost 10

²⁷ In its *Further Notice* initiating the LEC Nondominant proceeding, the Commission acknowledged that the competitive landscape had changed significantly since the adoption of the *LEC Classification Order* including increased availability of wide area pricing plans from wireless providers, "limited, but increasing" substitution of wireless service for traditional wireline service, especially for interstate calls, and increased Internet usage. *LEC Non-dominant Further Notice*, 18 FCC Rcd at 10918-19 ¶ 8.

²⁸ Mr. Teitzel, Qwest Staff Director – Public Policy, is responsible for analyzing telecommunications competition in the geographic areas and markets served by Qwest. See attached Teitzel Declaration at 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 4. Residential connections include Qwest's landline, DSL, and wireless services as well as services of non-Qwest landline and wireless competitors (excluding video connections). *Id.*

million] and “now exceeds the number of Qwest residential and business lines in service” by a large margin.³² He also observes that “an increasing number of wireless subscribers are using wireless service as their primary telecommunications service.”³³ In summarizing, Mr. Teitzel states “[i]n a telecommunications market now characterized by vibrant competition, it is clear that Qwest retains little, if any, market power in the provision of local exchange services.”³⁴

B. Competition In The Provision Of IXC Services

Today in-region IXC service prices are set by the competitive market in the absence of tariffs.³⁵ The primary market participants include wireline telephone companies, wireless carriers, cable companies, resellers of bulk communications, and prepaid calling card providers.³⁶ Currently, Qwest participates in the market through its Section 272 affiliates, QCC and QLDC. No single market participant has the ability to raise price by restricting output -- in fact, it would be a self-defeating maneuver.³⁷ Even if a large IXC withdrew from the market,³⁸ the remaining

³² *Id.* at 7.

³³ *Id.* at 9.

³⁴ *Id.* at 17.

³⁵ See *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, Second Report and Order, 11 FCC Rcd 20730 (1996) (“*Tariff Forbearance Order*”), on recon., 12 FCC Rcd 15014 (1997), *pets. for rev. denied*, *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000); the D.C. Circuit lifted its *Stay* of these *Orders* on May 1, 2000 and issued its Mandate on June 20, 2000; and see *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999).

³⁶ In this petition, Qwest is only addressing the extent of the competition that it faces in its in-region states since that is the scope of Qwest’s forbearance petition. Qwest is not arguing that the market for IXC services is a region-wide market.

³⁷ Even when AT&T had almost a 60% market share, the Commission found that both residential and business customers were highly demand elastic and would switch from AT&T to obtain lower rates. See *AT&T Reclassification Order*, 11 FCC Rcd at 3305 ¶ 63, 3306 ¶ 65.

³⁸ It is highly unlikely that AT&T and MCI will cease doing business in Qwest’s region after their respective mergers with SBC and Verizon. If anything Qwest will face increased

participants would have sufficient excess capacity to expand their output without raising prices in most cases.³⁹ As Drs. Carlton, Sider and Shampine noted in their declaration in support of Qwest's comments in the LEC Non-dominant proceeding, network capacity has grown at an almost exponential rate in recent years as a result of a massive expansion in the deployment of fiber-optic cable and related electronic developments which allow carriers to derive greater amounts of capacity from a single fiber strand.⁴⁰ Furthermore, overall industry capacity would not shrink since most communications investments are "sunk" investments (e.g., fiber, right-of-way, conduit, etc.).⁴¹ The mere existence of unused capacity (that can be quickly "turned on") puts downward pressure on prices.

It is beyond question that the market for IXC services is highly competitive in Qwest's 14-state region. While no single provider has the ability to "dominate" the IXC services market in Qwest's region, wireless providers present a far greater competitive threat to existing wireline

competition within its service area from these MegaBOCs, as SBC and Verizon have indicated in their comments in support of their pending mergers. See, e.g., Joint Opposition of SBC Communications Inc. and AT&T Corp. to Petitions to Deny and Reply to Comments, WC Docket No. 05-65, *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AT&T Corp., Transferor to SBC Communications Inc., Transferee*, filed May 10, 2005 at 131-40; Joint Opposition of Verizon Communications Inc. and MCI, Inc. to Petitions to Deny and Reply to Comments, WC Docket No. 05-75, *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, filed May 24, 2005 at 13-47, and Attachment 1 thereto, Reply Declaration of Bamberger, Carlton and Shampine at 28-34.

³⁹ The Commission found this to be the case in 1995 when it found AT&T to be a non-dominant provider with a 60% market share. At the time, the Commission found "AT&T's competitors have enough readily available excess capacity to constrain AT&T's pricing behavior – i.e., that they have or could quickly acquire the capacity to take away enough business from AT&T to make unilateral price increases by AT&T unprofitable." *AT&T Reclassification Order*, 11 FCC Red at 3303 ¶ 58.

⁴⁰ See Qwest Comments, WC Docket No. 02-112 and CC Docket No. 00-175, filed June 30, 2003 and its attached Declaration of Dennis W. Carlton, Hal Sider and Allan Shampine, dated June 30, 2003 at 23-25 ¶¶ 38-40 ("Declaration of Carlton, Sider and Shampine").

⁴¹ "These assets are likely to remain available to a new entrant even if existing long distance companies are driven from the market." *Id.* at 29-30 ¶ 55.

providers of IXC service than Qwest or any other landline provider ever will.⁴² As Mr. Teitzel notes in his declaration, wireless competition has exploded since 2000 with the number of wireless subscribers in Qwest's 14-state region growing by almost 10,000,000 or 83% from June 2000 to December 2004.⁴³ As Drs. Carlton, *et al.*, have found, competition in the market for IXC service has grown enormously with the widespread availability of low-cost wireless packages.⁴⁴

Sunset of Section 272's separate affiliate requirement should not have an upward impact on long distance prices. Prices have fallen dramatically since 1995 and there is no reason to believe that prices will rise with sunset of Section 272's requirements and a grant of this forbearance petition. If anything, the fact that Qwest can reduce its internal costs and organize more efficiently should allow Qwest to be even more competitive in pricing and packaging its IXC products. Reducing output (of IXC services) in an attempt to increase profits would be nonsensical for Qwest or any other market participant in the IXC market where capacity far exceeds demand on most routes. Permitting QC to integrate its local exchange operations and Qwest's IXC operations, post-sunset, and provide IXC service on a non-dominant carrier basis cannot adversely affect competition given the fact that QC lacks market power in the provision of both local exchange and in-region IXC services. Nor will allowing QCC, QLDC or any other

⁴² *Id.* at 20 ¶ 34 where they cite to a Lehman brothers study that estimates that 70% of AT&T's \$3.5 billion decline in consumer revenues between 2001 and 2002 was due to wireless and Internet (*e.g.*, e-mail) substitution.

⁴³ See Teitzel Declaration at 8, Table 2. Qwest no longer has its own wireless network but resells the wireless service of Sprint Wireless. Even as a reseller, Qwest Wireless accounts for a very small proportion of the market for wireless services. *Id.* at 9.

⁴⁴ Many of these wireless packages offer virtually unlimited "free" calling during off-peak and non-business hours. Furthermore, most wireless plans do not distinguish between local and long distance calls as long as the call originates in the wireless provider's service area. Under such plans if a subscriber does not exceed the maximum number of minutes allowed under his monthly plan, the marginal cost of long distance calls is effectively zero. See Declaration of Carlton, Sider and Shampine at 17 ¶ 30.

Qwest affiliate to provide IXC services as non-dominant carriers outside the strictures of the Commission's pre-sunset Section 272 rules adversely affect competition. As such, there is no economic basis for imposing dominant carrier regulation on Qwest's in-region IXC service, no matter how Qwest chooses to provide it.

Competition in IXC service is also enhanced by the fact that IXC service has become a commodity. With the advent of dialing parity and equal access,⁴⁵ most purchasers view long distance providers as selling essentially the same product rather than differentiated products. The closest thing to the competitive markets of economic textbooks is a commodity market. In such cases it is extremely difficult, if not impossible, for any one market participant to differentiate its product from the products of others and increase profits by restricting output and raising prices.

V. A GRANT OF THIS FORBEARANCE PETITION IS JUSTIFIED

A. Forbearance Would Allow Qwest To Reduce Unnecessary Costs And Compete More Effectively

Currently, Qwest provides in-region IXC services through QCC and QLDC, its Section 272 affiliates. The Commission's Section 272 rules impose unnecessary costs on Qwest and limit Qwest's flexibility in how it can provision and deliver in-region IXC services to customers. Qwest has looked forward to Section 272 sunset in December 2006 as an opportunity to provide IXC services in a more efficient manner. Now with sunset on the horizon, Qwest faces the unpalatable situation of being classified as a dominant carrier in the provision of in-region IXC services -- unless Qwest continues to comply with the full set of Section 272 rules that applied

⁴⁵ It is noteworthy that all landline telecommunications subscribers in Qwest's 14-state operating region have free choice of any of a multitude of largely deregulated providers of interLATA long distance services under the Commission's long distance presubscription rules, regardless of which entity is providing the customers' local exchange service.

before sunset. Qwest did not expect to be in this situation at this point in time.⁴⁶ But it is -- and that is why Qwest is filing this forbearance petition.

Qwest cannot say with certainty how it would organize its in-region IXC services business if it were not constrained by the existing dominant carrier rules. However, one thing is certain -- IXC services would be provided in a different and more cost effective manner than they are being provided today by Qwest. It remains to be seen how much Qwest would be able to reduce its IXC costs -- but it is expected to be a significant amount over time. In any event, it is self-evident that significant efficiencies will result if Qwest can operate from an integrated entity instead of a separate 272 affiliate or if Qwest can operate from a non-272 compliant affiliate.⁴⁷ Today's stringent structural separations requirements imposed by Section 272 result in significant duplication of efforts and costs in Qwest's 272 affiliates and its LEC, QC. The Commission recognized the significance of unnecessary cost duplication between BOCs and their Section 272 affiliates when it allowed these companies to share Operating, Installation and Maintenance ("OI&M").⁴⁸ OI&M costs are just "the tip of the iceberg." Indeed, the Commission has long recognized that structural separation harms the public by not allowing BOCs to take advantage of economic efficiencies associated with providing services on an integrated basis.⁴⁹

⁴⁶ Qwest anticipated that the Commission would have taken action in the LEC Non-dominant proceeding and relieved most LECs of dominant carrier regulation in the provision of in-region IXC services.

⁴⁷ See, e.g., 47 U.S.C. § 272(b), (c), (d) and (e) (setting forth obligations of a 272 affiliate).

⁴⁸ See *In the Matter of Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, Report and Order in WC Docket No. 03-228, Memorandum Opinion and Order in CC Docket Nos. 96-149, 98-141, 01-337, 19 FCC Rcd 5102, 5111 ¶ 16 (2004).

⁴⁹ For example, the Commission has repeatedly acknowledged this in its Computer Inquiry proceedings. See, e.g., *Phase I Order*, 104 FCC 2d 958, 1007-10 ¶¶ 89-94, 1011-12 ¶¶ 98-99

In short, forbearance would give Qwest the freedom to lay the groundwork for future cost savings today. As such, forbearance is critical and would position Qwest to compete more effectively against other large providers of IXC services, including integrated nationwide wireless providers.

B. Section 10 Requires That The Commission Forbear From Applying Its Dominant Carrier Rules To Qwest's Provision Of In-Region IXC Service

Section 10 envisions that the Commission will forbear from the enforcement of unnecessary rules that currently are being applied to carriers. This petition is somewhat different because it addresses a situation that does not yet exist -- but soon will. Section 272 prohibits BOCs from providing in-region IXC services in any manner other than through a Section 272 affiliate. And the Commission has found Section 272 affiliates to be non-dominant providers of IXC services. With the sunset of Section 272, QCC and QLDC, Qwest's Section 272 affiliates, will be classified as dominant carriers unless they continue to comply with the Commission's pre-sunset rules. Thus, essentially what Qwest is asking for in this petition is the preservation of the status quo -- classification as a non-dominant provider of IXC services in-region. Failure to forbear would be a step backward and the imposition of more regulation in a market that is already fully competitive.

Regardless of whether Qwest continues to be classified as a dominant carrier in all or a portion of its 14-state service area for other purposes, it makes no sense for the Commission to impose dominant carrier regulation on QC or other Qwest non-272 affiliates in the provision of in-region IXC services. In fact, "[t]he Commission has long recognized that the regulations

(1986); *Notice of Proposed Rulemaking*, 50 Fed. Reg. 33581, 33582 ¶ 6, 33593-95 ¶¶ 75-87 (Aug. 20, 1985).

associated with dominant carrier classification can dampen competition.”⁵⁰ Advance notice requirements associated with tariff filings and tariff filings in and of themselves “stifle price competition and marketing innovation when applied to a competitive industry.”⁵¹ As the Commission has recognized, tariff filing requirements could “facilitate tacit coordination of prices” of IXC services in addition to imposing significant burdens on both carriers and the Commission.⁵² Forbearance would avoid all of these undesirable consequences of dominant carrier regulation while still allowing Qwest to provide IXC services in the most effective and cost efficient manner.

1. Dominant carrier regulation is not required to ensure that rates and practices are just, reasonable and not unreasonably discriminatory

The first statutory criterion for forbearance requires that the Commission determine whether the application of its dominant carrier rules are necessary to ensure that rates and practices are just, reasonable and not unreasonably discriminatory. Forbearance from applying the dominant carrier rules would not have a detrimental affect on Qwest’s rates for IXC services. Qwest does not currently provide these services subject to the dominant carrier rules. Rates are set by the competitive market today. Forbearance should have no impact on overall rates -- but should allow Qwest to compete more efficiently and effectively in the provision of IXC services in its in-region territory. It would be a step backward and anticompetitive if Qwest were classified as a dominant carrier in the provision of IXC services post-sunset.

Allowing Qwest’s LEC, QC, to provide IXC and local exchange services on an integrated basis or through a non-272 affiliate would not have a detrimental impact on rates in either IXC or

⁵⁰ *LEC Classification Order*, 12 FCC Rcd at 15806-07 ¶ 88.

⁵¹ *Id.*, citing the *Tariff Forbearance Order*, 11 FCC Rcd at 20760-61 ¶ 53.

⁵² *Id.* at 15807-08 ¶ 89.

local exchange markets. Qwest does not possess market power in either of these markets, as noted above. In fact, non-dominant classification of IXC services would simply allow Qwest to do what Qwest's competitors have done for years - to bundle local and long distance offerings. The Commission has found that bundling services is in the public interest by fostering competition, reducing prices, reducing transactions costs and encouraging service innovation.⁵³

In summary, application of the dominant carrier rules to Qwest's provision of IXC service in the post-sunset environment would be a step backwards and would reduce the level of competition in Qwest's 14-state in-region service area. Accordingly, it is clear that such regulation is not necessary to ensure that the rates and practices are just, reasonable and not unreasonably discriminatory.

2. Dominant carrier regulation is not necessary to protect consumers

The second statutory criterion for forbearance requires that the Commission determine whether enforcement of the dominant carrier rules post-sunset is necessary for protection of consumers. As shown in the previous section, "re-institution" of the dominant carrier rules after sunset is not necessary to ensure that Qwest's rates and practices for IXC services are just, reasonable and not unreasonably discriminatory. For all intents and purposes, application of the dominant carrier rules in the post sunset environment would be an anticompetitive step on the Commission's part. The prices of Qwest's IXC services will continue to be constrained by competition if the Commission forbears from applying its dominant carrier rules to Qwest post-sunset. Furthermore, the Commission has many regulatory tools at its disposal if it believes that

⁵³ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, Report and Order, 16 FCC Red 7418, 7423 ¶ 7 (2001).*

Qwest or any other provider is acting in an anticompetitive manner -- dominant carrier regulation of Qwest's in-region IXC services provides no further protection.

Forbearance from applying the dominant carrier rules would allow Qwest to reduce its costs and, thereby, compete more effectively. Enhanced competition always serves the interests of consumers.

In short, the Commission's dominant carrier regulations as applied to Qwest post-sunset provide no protections or benefits to consumers. Therefore, the Commission should find that Section 10(a)'s second criterion is satisfied.

3. Forbearance is consistent with the public interest

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the dominant carrier rules is consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."⁵⁴

Clearly, if the Commission forbears from applying its dominant carrier rules to Qwest post-sunset it will promote competition by allowing Qwest to reduce its costs and provide IXC services in the most efficient manner. While Section 10 does not require the Commission to find that competition is enhanced in order to find that Section 10's conditions have been satisfied, it would truly be at odds with the Commission's pro-competitive goals if it did not forbear from enforcing the dominant carrier rules against Qwest post-sunset.

The Commission should find that forbearance serves the public interest because it would avoid unnecessary and inappropriate "re-regulation" of Qwest's IXC services post-sunset. As

⁵⁴ 47 U.S.C. § 160(b).

such, the Commission should find that forbearance serves the public interest and that Section 10(a)(3) has been satisfied.

4. Section 10(d) does not bar forbearance because Sections 251(c) and 271 have been fully implemented

Section 10(d) does not allow the Commission to “forbear from applying the requirements of Section 251(c) or 271 . . . until it determines those requirements have been fully implemented.”⁵⁵ These provisions of the Act do not prevent the Commission from granting Qwest’s forbearance petition from dominant carrier regulation in the provision of IXC services since neither Section 251(c) nor 271 are impacted by this request. Furthermore, the Commission has already determined that the requirements of these two sections of the Act have been “fully implemented.”⁵⁶

VI. CONCLUSION

As demonstrated in the foregoing sections of this Petition, the Commission should find that the three statutory criteria that Congress established for forbearance in Section 10 of the Act have been satisfied and that it is not necessary to apply the dominant carrier rules to Qwest’s

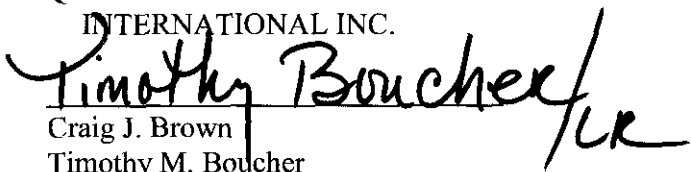
⁵⁵ 47 U.S.C. § 160(d).

⁵⁶ See *In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21503 ¶ 15 (2005). Also, see, *Qwest Pctition for Forbearance of the Circuit Conversion Rules*, October 4, 2005, at 40 nn. 108-110 (WC Docket No. 05-294).

post-sunset provision of IXC services. As such, Qwest requests that the Commission grant this Petition at the earliest possible date but no later than December 3, 2006.

Respectfully submitted,

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November 22, 2005

DECLARATION OF DAVID L. TEITZEL

1. My name is David L. Teitzel. I am employed by Qwest Services Corporation ("QSC")¹ as Staff Director-Public Policy. My business address is 1600 7th Avenue, Room 3214, Seattle, WA 98191. I have been employed by Qwest and its predecessor companies, U S WEST and Pacific Northwest Bell, for over 31 years. My current responsibilities include analyzing telecommunications competition in the geographic areas and markets served by Qwest. In that capacity, I have developed and presented competitive evidence and testimony (including written declarations/affidavits) in numerous state and federal regulatory proceedings.

I received a Bachelor of Science degree from Washington State University in 1974 and have been continuously employed by Qwest and its predecessor companies since that time. I have held a number of management positions in various departments, including Regulatory Affairs, Network and Marketing. As a Marketing Product Manager, I was responsible for product management of Basic Exchange, Centrex and IntraLATA Long Distance services. I have also served as a Market Manager for Qwest Dex directories in the Puget Sound region. I was named to my current position in March 1998.

¹ QSC performs support functions, such as regulatory support, for other Qwest entities.

2. The purpose of this declaration is to provide an assessment and description of the competition that Qwest Corporation² faces in the provision of local exchange service in its 14-state in-region territory. I do this in the remainder of my declaration.

LOCAL TELECOMMUNICATIONS COMPETITION IN QWEST'S REGION

3. The local telecommunications market in Qwest's 14-state operating region ("Qwest Region") is undergoing a rapid evolution, from a market with only modest competition when the Telecommunications Act of 1996 was enacted to the current market featuring a robust mix of "intramodal" (e.g., wireline CLEC) and "intermodal" (e.g., wireless, VoIP [Voice over Internet Protocol]) competition. While competitive local exchange alternatives have enjoyed significant customer growth, Qwest's retail access line base has declined significantly from 17,091,000 lines in December 2000 to 13,177,000 in September 2005.³ An ever-increasing number of customers are purchasing alternative communications options in the current market. However, it is difficult to precisely measure changes in Qwest's "share" of the overall telecommunications market since many competitive providers are not regulated

² All references to "Qwest" in the remainder of my declaration refer to Qwest Corporation.

³ Source: Qwest Form 8-K for 2000 and 3Q2005 (filed January 25, 2001 and November 1, 2005). It should be noted that this access line decline excludes any impacts of market growth (e.g., does not account for new customers that immediately subscribe to a competitor's service and have never been Qwest customers in the first instance).

(or are lightly regulated) and not required to report in-service customer counts. Independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics. For example, TNS Telecoms ("TNS"), an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends. In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state⁴ and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market.⁵ In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete "connection" under TNS' definition. For example, a customer with Qwest landline service and Verizon Wireless service would be counted as having two "connections." In fourth Quarter 2000, TNS reported Qwest's share of residential communications connections in the Qwest Region at 59%. In second Quarter 2005, Qwest's share of residential

⁴ In Qwest's 14-state territory, the TNS sample is drawn strictly from exchanges within the Qwest service area footprint and does not include data from Independent service territory.

⁵ TNS Telecoms does not conduct a "connections share" analysis for the business market.

communications connections declined to 36%.⁶ Clearly, this data confirms that consumers in the Qwest Region are finding alternative means of satisfying their telecommunications needs.

4. Qwest's wireline competitors have utilized a variety of means of delivering telephone services to their customers, including resale of Qwest retail services, use of Unbundled Network Elements ("UNE") and use of competitive local exchange carrier ("CLEC")-owned switching and loop facilities. Recently, the federal rules governing CLEC use of certain wholesale elements of Qwest's network were modified. On February 4, 2005, the FCC issued its *Triennial Review Order on Remand* which found that CLECs are not competitively impaired without access to local switching as an UNE and that the Unbundled Network Element-Platform ("UNE-P") wholesale service, which includes local switching, need no longer be offered by RBOCs after a one-year "phase-out" period. However, Qwest has made available a UNE-P replacement product entitled Qwest Platform Plus ("QPP"), which is a contract offering available to the CLEC community on a non-discriminatory basis at commercial, negotiated rates enabling CLECs to continue to utilize Qwest's network on a wholesale basis once UNE-P is discontinued. While the QPP service is not priced on a TELRIC basis, the negotiated rates provide a fair opportunity for CLECs to continue to utilize Qwest's network in providing competitive telecommunications services. As of

⁶ Source: TNS Telecoms, September 1, 2005.